

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer Protection in the Broadband Era)	WC Docket No. 05-271
)	

**REPLY COMMENTS OF THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The Public Service Commission of Wisconsin (PSCW) respectfully submits these reply comments in response to the Federal Communications Commission (Commission) *Notice of Proposed Rulemaking* (NPRM) in WC Docket No. 05-271, *Consumer Protection in the Broadband Era*.¹ The NPRM was released on September 23, 2005, and published in the Federal Register on October 17, 2005. The Report and Order that accompanied the NPRM classified, for regulatory purposes, wireline broadband Internet access services (generally digital subscriber line (DSL)) furnished over a provider's own facilities as Information Services under Title I of the Telecommunications Act – a classification previously given to cable modem broadband services. The NPRM requested comment on what, if any, consumer protection provisions under Title II authority need to be addressed with regard to any broadband Information Service offerings.

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33; *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242; *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Report and Order and Notice of Proposed Rulemaking, FCC 05-150, ¶¶ 32-86 (rel. Sept. 23, 2005) (*Wireline Broadband Internet Access Services Report and Order and NPRM*).

The NPRM specifically asks whether the following Title II provisions for telephone services need to be applied to broadband Information Service offerings:

1. Customer Proprietary Network Information (CPNI) (NPRM ¶¶148-149),
2. Slamming (NPRM ¶¶ 150-151),
3. Truth-in-Billing (NPRM ¶¶ 152-153),
4. Network Outage Reporting (NPRM ¶ 154),
5. Section 214 Discontinuance (NPRM ¶¶ 155-156),
6. Section 254(g) Rate Averaging Requirements (NPRM ¶ 157), and
7. Federal and State Involvement and Consumer Options for Enforcement (NPRM ¶¶ 158-159).

The PSCW commends the Commission for raising these important questions and for seeking input on whether and how to maintain a safety net of consumer protections for the users of broadband services. Although the Commission has taken actions that reduce or eliminate many of the traditional regulations traditionally applied to telephone services, this Commission investigation recognizes that in the more competitive, less-regulated world of information-like services, consumers may still benefit from some basic protections and reasonable continuing mandates on business practices.

The PSCW believes, in general, that certain consumer protections have contributed to gaining and sustaining broad subscription to traditional telephone services. Right now it is unknown how many customers eschew or discontinue subscription to broadband service due to provider or service issues or lack of specific consumer protections. Therefore, it is difficult to gauge precisely what specific consumer protections would be necessary or useful to achieve higher levels of subscription to, and broaden availability of, broadband services. Nevertheless, the PSCW believes that to sustain growth in the broadband service market and to ensure its place in the national economy it is reasonable and necessary that customers of broadband services be assured of some specific consumer protections and information.

The following comments address the seven topics raised and specific proposals offered in the NPRM regarding broadband consumer protection and the initial comments filed by various parties.

Customer Proprietary Network Information (CPNI):

The PSCW encourages the Commission to take preventive actions to protect all customer proprietary information (CPI) and CPNI accumulated by broadband service providers.

The Commission asks if CPNI privacy requirements should be imposed on the providers of broadband Internet access services. In general, privacy and vulnerability to identity theft are concerns for subscribers to any service where the provider collects and retains personal and sensitive information. The PSCW encourages caution and supports appropriate protective and preventive action where customer proprietary information is involved. The National Association of State Utility Consumer Advocates (NASUCA) rightly points out that market forces are inadequate to ensure protection of consumers' privacy rights. NASUCA further points out that the consumers' ability to change providers is an inadequate recourse to prevent or remedy misappropriation or release of personal information.²

Since 1998, Congress and most states have enacted laws to criminalize identity theft. The passage of both federal and state identity theft legislation indicates that this type of crime has been widely recognized as a serious problem across the nation. Yet, the data at the national and state level show that identity theft and Internet-related fraud are still growing problems.³

² Comments of the National Association of State Utility Consumer Advocates, Jan. 17, 2006, pp. 28-30.

³ In February 2005, the Federal Trade Commission (FTC) reported that during 2004, it received over 635,000 complaints involving consumer fraud (388,603) and identity theft (246,570). The FTC estimates that these complaints represented losses of more than \$547 million. Nineteen percent of these cases involved telephone and utilities fraud. The growth trend in such illicit activity is exemplified in the fact that, by comparison, there were 542,378 cases of consumer fraud and identity theft complaints filed in 2003 and 403,688 cases were filed in 2002.

Of the more than 635,000 complaints filed in 2004, 205,568 specifically involved "Internet-related" fraud. The FTC considers a fraud complaint "Internet-related" if it concerns an Internet product or service, if the company initially contacted the consumer via the Internet or if the consumer responded via the Internet. As broadband

While the fraud and identity theft issues cited above cannot be directly correlated to broadband Internet service providers, federal and state authorities have targeted the misuse of personal and/or account information as a serious and growing problem. Several industry commenters suggest the competitive telecommunications market will assure consumer protection and the Commission should wait to apply corrective actions for market abuse when it occurs.⁴ The PSCW responds that the problem exists and it cannot be mitigated by competition without first risking unacceptable levels of consumer harm. It would be more reasonable to require all retail broadband providers to adhere to CPNI and other privacy standards to safeguard their customers' account information as well as any other personally identifying information which may be retained in customer records. These protections would help to minimize the risk of identity theft and fraud for consumers. Further, certain restrictions on use of CPNI and other personal data may allay the concerns identified by AARP regarding concerns of older Americans about the privacy of the information provided to do Internet transactions and that their Internet activities are tracked without permission.⁵ Allaying such privacy concerns may make subscription to broadband services more attractive just as the opportunity for the privacy of a single-party line did for telephone service.

services become more readily available and as personal computers become more affordable, it is likely that number of Internet fraud complaints will continue to steadily increase.

The Wisconsin communities of Milwaukee, Waukesha, and West Allis ranked twenty-third nationally for having the highest incidence of fraud based on the number of complaints per 100,000 residents. These same communities ranked thirty-second for having the highest incidence of identity theft. On a state level, Wisconsin ranked seventeenth for fraud complaints (6,643 complaints with losses of \$5,654,072) and thirty-seventh for the number of identity theft complaints reported (2,646 complaints). Forty percent of the Wisconsin fraud complaints (2,658 complaints) were Internet-related, while 24% involved telephone or utilities fraud (644 complaints). Source: "National and State Trends in Fraud and Identity Theft, January-December 2004" Federal Trade Commission, February 1, 2005, pp. 3, 4, 8, 12, 13, 14 & 65. http://www.consumer.gov/idtheft/pdf/clearinghouse_2004.pdf.

⁴ See, for example: Comments of the Telecommunications Industry Association (TIA), pp. 2-3; Comments of CTIA – The Wireless Association, pp. 10-11; Comments of the United States Telecom Association (USTelecom), pp. 2-7; and Comments of AT&T Inc., pp. 10-14.

⁵ Comments of the American Association of Retired Persons (AARP), p. 6.

The Commission also inquired as to what type of customer proprietary information (CPI) may be in the possession of broadband Internet access services. Broadband Internet providers would in most cases have basic information regarding the customer's listed name, service address, billing name, and billing address, but they often have considerably more personal identification and credit information. Common examples would be the customer's social security number and credit card information. In addition, the providers have account passwords and detailed information regarding the customer's subscription services and E-mail accounts. The provider may also have bank account numbers for automatic or E-payments and the customers' responses to questions regarding personal information such as primary school attended, first car make or model, mother's maiden name, pet names, etc., generally requested to ensure secure access to account information. In addition, on-line security suites offered by many broadband providers to protect them from spam, pop-ups and viruses, often accumulate personal usage-based information such as the history of websites which are securely accessed or are blocked by the user and E-mail senders and addressees that are blocked or identified as safe. These are all examples of the types of CPI a broadband Internet provider may hold. It is easily understood how a breach in or lack of security for even some of this information could trigger any of several identity theft and consumer fraud scenarios, so this information deserves considerable protection under specific CPI privacy and security requirements.

Slamming:

The PSCW believes that the Commission should address slamming of broadband service associated with traditional wireline voice service in rules. Preventive protection from cramming can be achieved through targeted Truth-in Billing requirements.

The Commission asked under what circumstances subscribers to broadband Internet access services could get slammed and if unauthorized changes (cramming) are more likely to occur in situations where the broadband provider relies on third-party transmission facilities.

The experience of the PSCW has been that any loss of broadband service has resulted from the slamming of voice services. Restoration of broadband service under those circumstances, if possible, generally takes longer and is more costly, time-consuming and difficult for individual consumers or state commissions to resolve than restoration of stand-alone voice service after slamming. They are even more complex when a CLEC is leasing ILEC facilities to provide DSL service. Sometimes DSL service cannot even be restored due to the status of copper facilities the CLECs are eligible to lease.

The PSCW agrees with industry commenters such as the National Cable & Telecommunications Association (NCTA) that the opportunity for competitors to slam a broadband-only customer is considerably reduced from the opportunities associated with traditional voice telephony.⁶ Clearly, any such slamming scenarios would have to be considerably different than those related to slamming of voice service. However, it is also clear that if such slamming occurs, it will likely result in fairly long broadband service outage and cause much greater economic harm than the slamming of a customer with only voice service. It is equally important to note that broadband service customers may be using VoIP over that broadband facility for their home phone service. So, while it may be reasonable to use a “wait and see” approach to slamming in the broadband market when it is not associated with voice service, there may need to be added protections for slamming voice service when it is associated with broadband service. It is also important to point out that if DSL is required to also be a stand-alone offering by telephone companies the incidence of disruption of the broadband service when a voice line is slammed would likely be considerably reduced.

Broadband providers have also made efforts to add value to their basic broadband service by adding additional services and features. These have included portal sites, search engines,

⁶ Comments of the National Cable & Telecommunications Association (NCTA), p. 14.

spam blockers, pop-up blockers, spy-ware blockers, firewalls, web accelerators, instant messaging programs and many other features, as well as bundling hardware and software with their broadband offerings. If providers begin offering functionalities such as quality of service overlays and packet prioritization, they will be able to offer additional features. Many of these functions carry, or will carry, an additional charge, which creates the potential for cramming.

The potential revenue stream from unauthorized acquisition of a customer's broadband service or loading unwanted and unrequested optional features on such service gives some incentive for unethical behavior, regardless of the underlying technology. There is the potential, that as the broadband industry continues to develop, some less-scrupulous providers may identify ways to increase their revenues through some form of slamming or cramming activity, particularly if the Commission declines to enact a specific consumer safeguard. Protection from cramming may be most easily achieved through targeted Truth-in-Billing requirements (addressed below). Slamming rules for broadband, however, may also address concerns about unsolicited and unnoticed transfer of customers by providers under sale, merger, and consolidation situations.

Truth-in-Billing:

The PSCW suggests that broadband consumers may need the protection of some aspects of the Commission's Truth-in-Billing requirements and that states can help gather the data to analyze broadband billing problems.

The Commission has inquired as to whether it should impose Truth-in-Billing requirements on the providers of broadband Internet access services. The Commission also seeks to identify problems that customers of broadband Internet services have had with their bills.

The intent of the current Truth-in-Billing laws is to make telecommunications invoices easier for customers to read and understand. Adherence to Truth-in-Billing principles makes it

easier for customers to identify slamming and cramming and other fraudulent activities on their accounts and to pursue remedies. If customers know what services they have and what they are billed for those services, those customers are better able to audit their expenditures, logically compare services, and determine the value they receive. Generally speaking, broadband consumers may need, and be entitled to, these same protections of the Commission's Truth-in-Billing requirements.

If specific broadband billing issues are not currently evident, this may indicate that a "wait and see" approach is acceptable. As NASUCA points out, however, the identification of billing issues may be a difficult task due to the light regulatory treatment these services are currently afforded at the state and federal level.⁷ Thus, to wait and see if problems arise, may in fact invite the problems that Truth-in-Billing guidelines could avoid.

The Commission's current Truth-in-Billing rules are not complicated and are reasonable and logical in their content which is intended to give consumers relevant information. They require that a telecommunication carrier's bill must: (1) be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered; (2) identify the service provider associated with each charge; (3) clearly and conspicuously identify any change in service provider; (4) identify those charges for which failure to pay will not result in disconnection of basic local service; and (5) provide a toll-free number for consumers to inquire or dispute any charges.⁸

These Truth-in-Billing requirements were specifically tailored for the voice telephony market; however, the underlying principles of those requirements could, after appropriate examination, be used to tailor similar requirements that address how broadband services are

⁷ Comments of NASUCA, pp. 42-53.

⁸ NPRM, ¶ 152.

billed to the subscribers. The Commission has the opportunity to explore what protections should apply to broadband consumers as it relates to their bills and set the guidelines that are needed to assure fair treatment of customers without undue burdens on providers. The PSCW also believes that this is an area where a cooperative approach with states can potentially be of assistance. Together, the Commission and states could address current complaint handling practices and billing concerns to highlight appropriate billing requirements and to achieve a reliable source of data to assist in analysis of broadband billing issues.

Network Outage Reporting:

The PSCW believes that the Commission should establish network reliability measures and reporting requirements tailored for broadband services. Localized network reliability and quality of service issues are best handled by states.

Broadband access to the Internet is becoming a cornerstone of worldwide commerce. Poor service reliability has the potential to slow its deployment to the detriment of the national economy. Outage reporting is one essential indicator of the reliability of a broadband service offering. While many industry commenters wrote that the competitive market place for broadband makes network outage reporting requirements unnecessary, NASUCA and the New Jersey Division of the Ratepayer Advocate (NJDR) point out that such information would be a basis for consumer choices between competitive offerings which could discipline the market to improve quality and reliability of broadband service offerings.⁹

On its own, the market is unlikely in the near future to produce sufficient and comparable measures and data on broadband quality and reliability. Therefore, at a minimum, it is incumbent upon the Commission to impose some network outage reporting requirements on the providers of broadband Internet access services. Having this data submitted to the Commission establishes some baseline by which to examine provider performance.

⁹ Comments of NASUCA, pp. 36-41, and Comments of the New Jersey Division of the Ratepayer Advocate, p.12.

The PSCW believes that network outage reporting alone is insufficient to reflect the quality and reliability of a broadband offering. It is essential to develop an appropriate set of measures or standards of reliability for broadband offerings that both meet consumer expectations and support the role of broadband in economic development. For instance, broadband networks, like the Internet itself, are designed to be redundant. Packet-switched networks are generally designed to automatically route traffic around failed or congested links, so outage reporting on an individual facility is not necessarily indicative of whether traffic continues to flow. Instead, outage reporting should occur when either software or hardware problems result in end-user customers being unable to use or significantly impaired in the use of their broadband service for a significant period of time.

The Commission asks if reporting requirements should differ depending on the nature of the facility or the type of customer served. The PSCW agrees with NASUCA's comment that for these requirements to have real value, reliability metrics should be developed, to the extent possible, so they are appropriate and measurable for all technologies and classes of customers.¹⁰ In any event, measures for specific technologies could be developed to help consumers distinguish reliability and quality differences between the offerings of providers using that specific technology.

The PSCW agrees with the New York State Department of Public Service's (NYSDPS) comment that network reliability and quality of service issues are best handled by states because of their generally localized nature.¹¹ The NYSDPS appropriately points out that this would allow the Commission to focus on the major outage problems with regional or national consequences that its current Title II rules clearly target.

¹⁰ Comments of NASUCA, pp. 41-42.

¹¹ Comments of the New York State Department of Public Service, p. 4-5.

Section 214 Discontinuance:

The PSCW suggests that the Commission should impose discontinuance-type requirements on the providers of broadband Internet access services.

The Commission inquired whether it should impose discontinuance-type requirements on the providers of broadband Internet access services. The PSCW believes the increasing consumer dependence on broadband services for commercial transactions and access to critical information increases the importance of an orderly transition when providers exit the market.

Broadband Internet access is rapidly becoming an essential service, regardless of the underlying technology. As consumers grow more dependant on broadband Internet access services, the need for notice to consumers is more crucial. The PSCW would re-emphasize the comments of the NJDRA that availability of broadband Internet access services from multiple providers does not necessarily mitigate the need for customer notice in order avoid short-term service interruption as affected customers move their service to alternate providers.¹² In addition to disruption of the broadband service, customers using VoIP may have their basic voice service placed at risk if their broadband provider exits the market without sufficient advance warning for orderly transition. Although the customers of an exiting provider would most likely have the option of returning to dial-up Internet access over a traditional wireline service or using an alternate broadband provider, they would need adequate time to make the necessary arrangements in order to avoid a service interruption. Further, there may be significant costs for the customers to make the necessary service and equipment changes and the money to cover those costs may not be available over a very short transition period.

Another consideration is that many broadband providers are now offering packages of services which include software to protect their customers' computers for viruses and other

¹² Comments of the NJDCA, pp. 12-13.

threats. If the provider exits the market, updates for that software may be unavailable or at least not readily available or affordable. The customer may need to completely replace software such as virus protection and firewalls. That process can be time consuming, and if the customers do not receive adequate warning, the security of their personal data and their computers may be at risk.

Section 254(g) Rate Averaging Requirements:

The PSCW believes the Commission should consider imposing rate averaging on broadband services where the facility provider is eligible for USF support.

The Commission also asks whether it should impose requirements similar to the Federal Universal Service Rules (specifically the rate averaging requirements of § 245(g)) on the providers of broadband Internet access services. While having similar universal service objectives for broadband and voice services may be appropriate, it may not be appropriate to use the same regulatory mechanisms to achieve those objectives. In this case, if increasing consumer acceptance of broadband services for commercial transactions and access to critical information is the ultimate goal, establishing a broadband universal service objective with compatible regulatory requirements is justified. Nevertheless, averaged rates have not always been standard in voice telephony and thus may not be an appropriate starting place for all broadband services.¹³

¹³ A brief historical review of rate averaging puts this question into perspective and may be useful. Since the 1930's it has been this nation's public policy to promote telephone service in all businesses and households for numerous reasons. Regardless of the justifications for promoting access to telephone service, rate averaging proved to be a cost-effective vehicle for many informal commercial communications, for expanding economic opportunity and workforce mobility, and for providing essential government services. Eventually the telephone became self-promoting for these purposes and for its social uses and for attaining social status. Widespread use of phone service came with the assurance of reasonable local phone service rates under state law. In many cases the rate structures provided reduced rates for lower privacy and quality of service standards, as evidenced by a higher number of parties on a line and by the interconnection of private rural "fence line" facilities. Lower rates also generally applied in areas closer to the serving central office, while zone and locality charges were applied to service in more distant or more costly to serve areas of an exchange. Exchange-wide average pricing replaced zone and locality charges as an enticement for customers to change from the less expensive multiparty-lines to one-party service, which then became the norm. Exchange-wide average pricing created implicit subsidies, which were sustainable in the era of regulated monopoly franchises.

In the current inquiry, the pricing objectives for increasing consumer acceptance of broadband offerings and the encouragement of providers to invest in rural broadband deployment may be in conflict. It is possible that rate averaging intended to increase consumer demand for broadband offerings may diminish providers' incentives to invest in broadband deployment, especially in higher cost areas. Clearly, the imposition of rate averaging will affect providers' decisions on where to deploy service. Without an obligation to provide broadband over particular service areas or regions, providers are free to build out to the point where they believe recovery of their average costs is possible at the average rates the market will bear. Allowance for higher rates in areas that are more costly to serve may entice more rapid deployment in these areas. A further consideration is that cost support for the facilities to serve many of those higher cost areas is currently available to ILECs through the federal USF but may not be available to other wireline and wireless broadband providers.

The current Universal Service Fund (USF) was established to help keep telephone service affordable for all Americans, including those with low incomes and those living in rural areas where the cost of providing telephone service is high. Competitive providers are more inclined to make network investments in more densely populated areas, as opposed to remote small towns and wholly rural areas with fewer potential customers and higher costs. This pattern is easily seen in the urban-focused deployment of cable television facilities. As the NJDRA points out, however, this scenario could easily create two distinct customer classes in the information age, the "haves" who have access to a wide variety of affordable, competitive telecommunication choices and the "have-nots" who may never have competitive options because there is no financial incentive for providers to offer them service.¹⁴ Therefore, it is essential that USF high-cost support be maintained in the broadband era to support facilities that make rural wireline

¹⁴ Comments of the NJDRA, pp. 15-25.

broadband deployment possible. It may, however, be an appropriate *quid pro quo* that some residual rate averaging requirements apply to recipients of that support just as the States of Alaska and Hawaii indicate current law dictates.¹⁵

Federal and State Involvement and Consumer Options for Enforcement:

The PSCW encourages the Commission to endeavor to provide guidelines, principles, and objectives in its rules for broadband consumer protection and to allow states to design specific administrative rules that implement them.

The structure chosen for Federal and State cooperation in ensuring public safety and consumer protection in regard to broadband offerings and consumers' options for pursuing enforcement of the established standards will have a lasting effect on perceptions of reliability and fairness for broadband users and providers.

NARUC has proffered a functional approach to jurisdictional cooperation in enforcement of consumer protection rules¹⁶ that the PSCW supports. In the NPRM the Commission portrays this approach as “where the Commission would be responsible for establishing the rules and each state would assume responsibility for enforcement.” If the Commission’s broadband consumer protection rules are too detailed, specific, and inflexible they will likely present more conflicts with enforcement where existing state commission authority may be lacking. This could substantially undermine the objective, and create a disincentive to aggressive enforcement, thus weakening the rules. Further, as the NYDPS points out, there are matters such as quality of service issues related to intrastate facilities where having the experience and staffing at “ground level” is a sound basis for the Commission to defer to state and local authorities altogether.¹⁷

The PSCW believes that the Commission should provide guidelines, principles, and objectives in its rules for broadband consumer protection and allow states to design specific

¹⁵ Comments of the State of Alaska, pp. 2-4, and Comments of the State of Hawaii, pp. 2-6.

¹⁶ Comments of the National Association of Regulatory Utility Commissioners, pp. 4-9, Appendix F.

¹⁷ Comments of the NYSDPS, pp. 3-5.

administrative rules that implement them. This approach would allow more states to rely on existing statutory authority and to create rules that match that authority, which, in turn, would allow proper accessibility to consumers and sound defense of state enforcement action.

Conclusion

The PSCW appreciates the opportunity to respond to these important questions regarding how to maintain a safety net of consumer protections for the users of broadband services. We trust the Commission will recognize that in the more competitive, less-regulated world of information-like services, the consumers may still benefit from, and continued consumer confidence in the value of subscription to such services may depend on, the basic protections and reasonable continuing mandates on business practices endorsed in these reply comments.

Dated at Madison, Wisconsin, February 28, 2006

By the Commission:

Christy L. Zehner

Christy L. Zehner
Secretary to the Commission

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